

SPECIAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

XXXXXX
XXXXXX
XXXXXX

Re: Special Notice of Potential Liability and Draft Consent Decree for Past Costs and Completion of the Remedial Action
Gulfco Marine Maintenance Superfund Site (06JZ)
Freeport, Texas

Dear:

This letter is to invite **current/past owner/arranger** to enter into negotiations with the U.S. Environmental Protection Agency (EPA) to settle its liability and to pay for or perform the remaining work that must be performed at the Site which consists of completion of the Remedial Action by preparation and implementation of final institutional controls; and Operation and Maintenance, including repairs to the existing cap and groundwater monitoring. The EPA determined a release of hazardous substances occurred at the Site and identified **XXXX** as the **current/past owner/arranger**. Based on the status of **XXXX** as **current/past owner/arranger**, **XXXX** is a Potentially Responsible Party (PRP) under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), 42 U.S.C. § 9607(a) with respect to the Site.

The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (ROD), executed on September 29, 2011. The ROD does not require a Remedial Design or physical construction of a Remedial Action. Because the ROD provided for no physical construction of a Remedial Action for the Site, the EPA documented Construction Completion at the Site on September 29, 2011.

Background

The Site is located at 906 Marlin Avenue, Freeport, Brazoria County, Texas. The property consists of Tracts 21 through 25 and Tracts 55 through 58, Subdivision 8, of the Brazos Coast Investment Company. Marlin Avenue separates Tracts 55 through 58 on the north from Tracts 21 through 25 on the south. Tracts 21 through 25 are approximately four-acre tracts bordered on the south by the Intracoastal Waterway. Tracts 55 through 58 are approximately five-acre tracts. The entire property is about 40 acres in size. The geographic coordinates of the Site are 28°58'07" north latitude, and 95°17'26" west longitude.

The Gulfco Site was a former barge cleaning, servicing, and waste disposal facility that operated from 1971 through 1998. Barges brought to the facility were cleaned of waste oils, caustics, and

organic chemicals, and the wash waters generated during these operations were stored in three unlined surface impoundments, or earthen pits, located on Lot 56 on the north side of Marlin Avenue. These impoundments were closed in 1982. After 1981, waste wash waters were stored in a rented floating barge or aboveground storage tanks located at the Site.

The Site is located on the north bank of the Intracoastal Waterway between Oyster Creek on the east and the Old Brazos River Channel and the Dow Barge Canal on the west. The southern part of the Site, south of Marlin Avenue, drains toward the south where it enters into the intracoastal Waterway. Drainage from areas north of Marlin Avenue is to the northeast into adjacent wetlands and then to Oyster Creek.

In January 2000, and in January 2001, the Texas Commission on Environmental Quality, formerly the Texas Natural Resource Conservation Commission, conducted soil, ground water, and sediment sampling, and documented the presence of various hazardous substances at the Site including volatile organic compounds, semivolatile organic compounds, pesticides, polychlorinated biphenyls, and metals.

The Site was proposed for listing on the National Priorities List (NPL) on September 5, 2002 (67 *FR* 56794), and was placed on the NPL effective May 30, 2003, in a final rulemaking published on April 30, 2003 (68 *FR* 23077).

The EPA issued a Unilateral Administrative Order (UAO), effective July 29, 2005, to the Site potentially responsible parties (PRPs) to perform a Remedial Investigation to define the nature and extent of contamination at the Site and to prepare a Feasibility Study to identify and screen remedial action alternatives. The PRPs completed the RI/FS in 2011.

A Site Removal Action began in November 2010 and was completed by March 2011. The Removal Action, which was performed pursuant to an Administrative Order on Consent (“AOC”), addressed the former AST Tank Farm at the South Area. The action included characterization and management of water accumulated in the AST Tank Farm containment areas; removal and off-site disposal of liquid wastes from the tanks; and solidification, removal, and off-site disposal of non-liquid (*i.e.*, solids and sludge) wastes from the ASTs. The tanks were subsequently demolished following removal of the wastes and decontamination. The South Containment Area was cleaned and decontaminated following the removal of all tanks and debris, and contaminated soil in the North Containment Area was excavated and removed for disposal. The concrete containment berms at the North and South Containment Areas were breached so that rainfall would freely drain from the structures. Piping, metal “cat-walks,” a steel hopper-like structure located within the North Containment Area, and a metal walled structure located immediately east of the North Containment Area were demolished and removed. The Removal Action also included an asbestos survey, and the removal and disposal of debris and contaminated soil located inside and east of the containment areas. The Removal Action objectives of protecting the public health, welfare, or the environment, set forth in the Settlement Agreement, were met through the performance of the Removal Action activities documented in the Final Removal Action Report.

The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 29, 2011. The ROD does not require a Remedial Design or physical construction of a Remedial Action. Because the ROD provided for no physical construction of a Remedial Action for the Site, the EPA documented Construction Completion at the Site on September 29, 2011. The remaining work that must be performed at the Site consists of: completion of the Remedial Action by preparation and implementation of final institutional controls; and Operation and Maintenance, including repairs to the existing cap and groundwater monitoring.

Opportunity to Negotiate

On behalf of EPA, I am offering you this opportunity to enter into negotiations, because EPA believes XXXX may be responsible for the cleanup of the Site under the Superfund Law. I have enclosed a "special notice" which explains that responsibility more clearly (Enclosure 1). Please note that all exhibits to the special notice can be found on the enclosed CD-ROM (Enclosure 2). This notice also explains the purpose of the enclosed Draft Consent Decree. Consistent with sections 121(1) and 122(j) of CERCLA 42 U.S.C. §§9621(f), 9622(j), and EPA policy, EPA is also inviting the State of Texas, as well as the Federal Resource Trustees to participate as parties to these settlement negotiations.

Please have your legal counsel contact Ms. Anne Foster, EPA Assistant Regional Counsel, at (214) 665-2169 within ten days of receipt of this letter and let her know whether you plan to submit a good-faith offer to EPA and will attempt to negotiate an agreement with EPA on this matter.

The enclosed notice requires you to reply in writing with a good-faith offer within 60 days of your receipt of this letter. The notice explains what EPA means by a good-faith offer. Note that the notice includes a demand for payment; this allows EPA to preserve certain legal rights. I urge you to read the enclosed notice carefully.

My staff will be available to meet with you on DATE TBD at TIME TBD at LOCATION TBD to explain the Superfund program and special notice process and to respond to any questions you may have. If you wish to meet, please contact Mr. Lawrence Andrews, Litigation Coordinator, at (214) 665-7397 to make arrangements. If you have legal questions, please call Ms. Foster at (214) 665-2169. If you have technical questions about the Record of Decision, please contact Mr. Gary Miller, Remedial Project Manager, at (214) 665-8318. If you have any other questions regarding this letter, you may contact Mr. Andrews.

My staff and I look forward to working with you during the coming months.

Sincerely yours,

Carl Edlund, Director

Superfund Division

Enclosures (xxx)

cc

Mr. Nathaniel Douglas
U.S. Department of Justice

ENCLOSURE 1
SPECIAL NOTICE FOR REMEDIAL DESIGN
UNITED NUCLEAR CORPORATION SUPERFUND SITE
MCKINLEY COUNTY, NEW MEXICO

This notice is from the U.S. Environmental Protection Agency (EPA) to XXXX. The use of “you” and “your” in this notice refers to XXXX. This notice informs and requests the following six items:

1. You may be responsible for the performance of the remedy selected in the Record of Decision (ROD) which includes the remaining work that must be performed at the Site consisting of: completion of the Remedial Action by preparation and implementation of final institutional controls; and Operation and Maintenance, including repairs to the existing cap and groundwater monitoring. This notice is issued under the Comprehensive Environmental Response, Compensation, and Liability Act, which is abbreviated as "CERCLA." CERCLA is also known as Superfund.
2. You are responsible to reimburse EPA for costs it has incurred at the Site.
3. EPA has an Administrative Record (AR) you may review.
4. The EPA will use special notice procedures when it works with you. This means that, as part of these procedures, EPA will not take certain types of actions at the Site for 60 days from the day you get this notice.
5. You are responsible for providing EPA a good-faith offer within 60 days from the date you receive this notice.
6. EPA has provided you contact information.

The following six sections provide additions details.

I. NOTICE THAT YOU MAY BE LIABLE

CERCLA provides that four types of persons are liable for cleaning up (or paying EPA to clean up) hazardous substances that have been released. The four types of liable persons are:

1. Persons who now own the place where the hazardous substance was released;
2. Persons who once owned or operated the place where the hazardous substance was released during the time when the hazardous substance was disposed of;
3. Persons who arranged for disposal or treatment of hazardous substances at the

place where the hazardous substance was released; or

4. Persons who selected the place where the hazardous substance was released as a disposal site and transported the hazardous substances to that place.

EPA's term for these persons is Potentially Responsible Parties or PRPs.

You may want to read the section of the CERCLA law, which describes which persons are liable for the cost of cleaning up hazardous substances. CERCLA can be found in Title 42 of the United States Code (U.S.C.) in Sections 9601 through 9675. The part of CERCLA which describes these responsible parties can be found at Section 9607. Definitions of terms used in CERCLA can be found in Section 9601. Section 9607 is sometimes called Section 107, the section number which it has in the act of Congress.

CERCLA also provides that EPA may order responsible persons to take response actions which EPA believes are needed to protect human health, welfare, or the environment. For example, EPA may issue an order (i.e. Unilateral Administrative Order) that requires a responsible person to conduct the Remedial Design and Remedial Action (RD/RA) in order to implement the remedial action selected by EPA in its Record of Decision (ROD) for the Site. If a responsible person does not comply with an EPA order, the person may be fined up to \$32,500.00 per day. In addition, if a responsible person does not comply with an EPA order, that person may also be liable for three times the amount of money which EPA spends on the cleanup.

The part of CERCLA which describes orders which EPA may issue can be found at Section 9606 of Title 42 of the United States Code. Section 9606 gives authority to the President, but the President has delegated that authority to EPA. Section 9606 is sometimes referred to as Section 106, the section number which it has in the act of Congress.

Based on an extensive review of records related to the release and/or disposal of hazardous substances at the Site, EPA identified XXXX as the PRP that is the current/past owner/arranger of/at the Site which contributed hazardous substances to the Site.

In accordance with the ROD, the Superfund Law, and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), XXXX is responsible for the costs of cleaning up the Site. EPA demands payment of all outstanding past response costs and intends to seek an agreement from XXXX to pay all future response costs, including cost of oversight as a part of the anticipated settlement. The EPA has selected a cleanup approach for the Site, which is described in the ROD issued by EPA on September 29, 2011. A copy of the ROD for the Site is included as Exhibit 2 to this letter.

As the responsible EPA official with delegated authority, I have determined that the Site presents an imminent and substantial endangerment to public health, welfare, and the environment, and, therefore must be cleaned up. You will be required to perform the remaining work that must be performed at the Site consisting of: completion of the Remedial Action by

preparation and implementation of final institutional controls; and Operation and Maintenance, including repairs to the existing cap and groundwater monitoring. In carrying out your work, XXXX will be guided by the draft Consent Decree and Statement of Work discussed in more detail below, as well as by appropriate EPA policy and guidance.

The EPA invites you to take stock of the evidence and to enter into negotiations toward a settlement which may be in your best interests. Settling with EPA may protect you from other responsible parties who may sue you to recover costs they incur in cleaning up the Site. In addition, as we said above, if you choose not to settle with EPA and you are found to be a responsible party, EPA may take civil administrative action against XXXX.

II. DEMAND FOR REIMBURSEMENT OF COSTS

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. You are responsible for reimbursing the United States Government for the response costs associated with these actions. These response actions include without limitations: drafting of the proposed plan, review and response of comments to the proposed plan, and drafting of the Record of Decision. These response activities also include associated administrative, finance, and enforcement activities and their costs. The EPA is seeking to recover from XXXX its response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA. The total of the EPA's costs through February 28, 2013, for the Site is \$2,033,717. Under Section 107(a) of CERCLA, EPA hereby makes a demand for payment from you for the above amount plus all interest authorized to be recovered under Section 107(a). A summary of these costs is enclosed as Exhibit 3.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to XXXX or its predecessors. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether you should notify your insurance carrier(s) of this demand, you may wish to review current and past policies. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that you file for protection in a bankruptcy court, you must include EPA as a creditor, because EPA has a potential claim against you. The EPA reserves the right to file a proof of claim or application for Reimbursement of Administrative Expenses.

Please make your payment for \$2,077,717 by certified check made payable to "EPA Hazardous Substance Superfund," and reference CERCLA Site ID Number 06JZ. Other methods of payment are available and information may be requested by contacting Mr. Lawrence Andrews, Litigation Coordinator, at 214-665-7397. Send the certified check to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076

St. Louis, MO 63197-9000

Send a copy of the check to:

Section Chief, Enforcement Assessment Section (6SF-TE)
Superfund Division
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

III. ADMINISTRATIVE RECORD

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, EPA has established an Administrative Record containing the documents that serve as the basis for EPA's selection of the appropriate response action for the Site. You may wish to review the Administrative Record to assist you in responding to this letter, but your review should not delay such response beyond the 60-day period provided by CERCLA. This Administrative Record is located at:

Freeport Public Library
410 Brazosport Blvd.
Freeport, TX 77541
(979) 233-3622
Contact: Ms. Margaret Janke, Branch Manager

U.S. Environmental Protection Agency – Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202
(214) 665-6427

IV. NEGOTIATION PERIOD

Under CERCLA, EPA may use special notice procedures when these procedures would help reach an agreement with PRPs. The special notice procedures are described in Title 42 of the United States Code at Subsection 9622(e). The powers given to the President by CERCLA Subsection 9622(e) have been delegated to EPA. Subsection 9622(e) is sometimes called Subsection 122(e), the section number which it has in the act of Congress.

The EPA has decided that special notice procedures may help EPA and **XXXX** reach a settlement for this Site. As part of the special notice procedures, EPA will not take certain types of actions at the Site for 60 days from the day you get this notice. During these 60 days, EPA invites you to settle some of EPA's claims. The EPA will extend this 60-day period for 60 more days if EPA gets a good-faith offer from you within 60 days from the date you receive this notice. The items which you must put in a good-faith offer are described in Section V (GOOD-FAITH OFFER) of this letter.

If you and EPA reach settlement within the 120-day negotiation period (it is a 120-day period because it includes the first 60-day period plus the 60-day period which EPA may add if you submit a good-faith offer), the settlement will be written as a Consent Decree. If approved, the Consent Decree would be signed and entered by a U.S. District Judge in United States District Court in conjunction with the simultaneous filing of a civil complaint.

To help negotiations get started, I have enclosed a Draft Consent Decree as Exhibit 4 that has been tailored by EPA to apply specifically to the Site. Also included is a draft Statement of Work (SOW) as Exhibit 5, which describes the work that needs to be done to implement the Site remedy as set forth in the ROD, in accordance with the Superfund Law, the NCP, and EPA policy and guidance.

V. GOOD FAITH OFFER

The enclosed Draft Consent Decree and Draft SOW should help you make a good-faith offer to perform the work at the Site. To accelerate EPA's review of your good-faith offer, please send us any suggested revisions to the Draft Consent Decree and Draft SOW. You can revise the Draft Consent Decree or Draft SOW by marking through the parts which you want to omit, and by adding new text in a way which facilitates EPA's recognition of the new text. If you use Microsoft Word, which is used by EPA, or other similar word processing software for PC equipment, please send us a redline/strikeout version that incorporates any of your suggested modifications.

In order for your offer to be a good-faith offer, it must be in writing and it must include these things:

1. An unconditional statement that you are willing to do or pay for the work to be performed at the Site. Your statement must be in keeping with EPA's draft Consent Decree and SOW. Your statement must be a good basis for more negotiations.
2. A paragraph-by-paragraph response to EPA's draft Consent Decree and SOW (a redline/strikeout draft consent decree and draft SOW will be all right). Also, please tell which changes are major issues for you.
3. Proof that you (or the party you will hire to do the work) have the technical skills to perform the work at the Site. If you will hire another party please tell us who, or tell us how you will pick that party.
4. A written statement that you are willing to pay EPA for response costs previously paid at the Site and to be paid by EPA in overseeing the conduct of the work at the Site.
5. Proof that you can pay for the work to be performed at the Site (an audited annual report may be acceptable).

6. A statement that you are willing to begin the work to be performed at the Site in keeping with the schedule set in the attached draft Consent Decree and SOW.
7. A general work plan, which describes how and when you will do the major parts of the work to be performed at the Site as described in the draft Consent Decree and SOW.
8. The name, address, and phone number of the party who will represent you in negotiations, if you will use a representative.

To save time and expense, please use your first good-faith offer to make all the changes which you would like to see in the draft Consent Decree and SOW. The EPA may not make changes you ask for at a later date.

If we decide that a good-faith offer has not been submitted within 60 days from the day you get this letter, we may end the negotiation period and begin response or enforcement actions.

VI. WHERE TO SEND YOUR GOOD-FAITH OFFER AND WHO TO CALL AT EPA

Please call Ms. Foster at EPA within ten (10) business days of receipt of this correspondence and let her know whether you plan to submit a good-faith offer and will attempt to negotiate an agreement with EPA for the Site. Please send your good-faith offer to Ms. Foster at the address listed below. As we said above, you have 60 days from your receipt of this notice to send EPA a written good-faith offer.

If EPA does not receive a good-faith offer from you within 60 days from your receipt of this notice, EPA will assume that you do not wish to negotiate. The EPA may then take response or enforcement actions as explained above in section 1 of this notice. If EPA performs the work at the Site (or any other action for the Site) you may be liable for EPA's costs plus interest, as well as any other sanctions or penalties that may apply.

You should send your response to this notice to:

Anne Foster, Assistant Regional Counsel
Office of Regional Counsel (6RC-S)
U.S. Environmental Protection Agency Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 665-8045
FAX (214) 665-2169

The discussions of fact or law in this notice are meant to help you understand CERCLA and EPA's actions at the Site. The discussions of fact and law are not final EPA positions on any matter discussed in this notice. If you or your attorney have legal questions about this notice,

please contact Ms. Foster. Questions concerning the technical aspects of the selected remedy from the ROD (Exhibit 2) should be directed to:

Gary Miller
Remedial Project Manager
Superfund Division (6SF- RL)
U.S. Environmental Protection Agency Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 665-8318
FAX (214) 665-6660

If you have any other questions regarding this notice, you may contact Lawrence Andrews, Litigation Coordinator, at (214) 665-7397. Thank you for your prompt attention to this important legal matter.

Enclosure 2 – CD ROM of Exhibits:

Exhibit 1 - Evidentiary Records (XXXX 104(e) Response)

Exhibit 2 - Record of Decision

Exhibit 3 - Summary of Response Costs

Exhibit 4 - Draft Consent Decree

Exhibit 5 - Statement of Work

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